

In re) Fair Hearing No. 15,331
)
Appeal of)

The petitioner appeals a decision of the Department of Social Welfare that he was overpaid Food Stamp benefits.

1. The petitioner is an elderly man who lives on Social Security and SSI benefits totaling \$567.91 per month. He also receives a Food Stamp benefit of about \$60 per month.

2. The petitioner has had a housing arrangement since May of 1993, in which he rents a room and a bathroom in the home of an elderly, disabled friend. He shares the living room and kitchen area with her. Prior to January of 1997, his arrangement was to pay her \$65 per week in rent and to take care of the fuel bills. The friend paid the other utilities, including electricity and telephone.

3. Based on this information, the petitioner's Food Stamps had been calculated by giving him a "full" standard utility allowance of \$318 per month for persons who pay all of their utilities themselves. This deduction reduced his countable net income considerably, which figure increased the amount of Food Stamp benefits he could get.

4. The friend with whom the petitioner lives is a

disabled woman who is also dependent upon Medicaid and Food Stamps. In late 1996, the worker reviewing the woman's updated needs statement called her and the petitioner and informed them that the rent he was paying her was making her over income for Medicaid benefits. They were advised that the petitioner could pay the mortgage, taxes, and insurance on the house directly to the providers and it would not be considered income to the woman. In that way, her Medicaid eligibility could be preserved. The petitioner did begin to pay those bills directly, which amount to about \$286 per month, and continues to do so. The two continued their utility arrangement much as before, with the petitioner paying the fuel bill and the rubbish bill (\$5 per month) and his friend paying the electricity, telephone, and other utilities.

5. In November of 1997, during a routine quality control review, a determination was made that the petitioner had been receiving a "full" utility allowance for Food Stamp in error when he should have only received half of the utility allowance because he and his woman friend split the payment of the utilities. (Apparently, the petitioner's need statements which he filed annually stated accurately that he paid the fuel. No one picked up on the fact that he did not claim to pay electricity or phone.) The petitioner's eligibility for benefits was recalculated using half the allowance, or \$159, back to January of 1997. It

was determined that he had been overpaid \$573 in Food Stamps because of the error. The petitioner does not dispute the calculations made by the Department as to the amounts he received and the amounts he should have received.

6. The petitioner's Food Stamp allotment was adjusted to reflect the change and in January of 1998, he was notified that he had been determined to have been overpaid \$573 due to the Department's error. He was advised as to ways he could repay the overpayment, including a monthly reduction of his future Food Stamp benefits. He was told by an employee of the Department that the reduction would be 5% or \$3 per month until the \$573 was paid off. The petitioner appealed this decision on January 12, 1998, and a hearing was set for February 19, 1998. The matter was continued several times so the petitioner could consult with an attorney and later, because he was hospitalized.

7. The petitioner opposes the overpayment because he always told the Department the truth and feels he should not be penalized for its error. He emphasized that he lives on a low fixed income. He also seems to feel that this overpayment occurred because of the advice he got from the Department to pay the housing expenses directly to the provider rather than to his friend. The evidence does not support that contention, however, as the petitioner's utility paying arrangement was never changed and has remained the same since 1993.

ORDER

The decision of the Department is affirmed.

REASONS

The Food Stamp regulations require that eligible households which share utility expenses with other individuals, including other Food Stamp households, must have their utility expenses prorated. If the standard utility allowance is used, as it was here, the proration between the two sharing households will be equal, that is, "each would be entitled to one-half of the standard allowance." F.S.M. 273.9(d)(6)(vii). It appears that failure to follow this regulation has resulted in the petitioner getting Food Stamps to which he was not entitled for some time, perhaps years, since he has been allowed a full allowance but has always shared utility expenses.

The petitioner has, because of the Department's error, been overissued more than \$40 per month in Food Stamps during the year preceding the discovery of the error or a total of \$573.¹ The Food Stamp program regulations require

¹ No evidence was offered, nor could it have appropriately been done under confidentiality requirements, as to whether the petitioner's friend received the other half of the utility deduction when her benefits were calculated during 1997. If she received no utility allowance, it is possible that she was underpaid Food Stamp benefits during this time. The petitioner may want to inform his friend that she should ask for a review of her benefits during the same period to assure that she got what she was entitled to.

the Department to establish a claim against any overissuance as follows:

. . . The State agency shall establish a claim against any household that has received more Food Stamp benefits than it is entitled to receive. . . .

. . .

(2) Administrative Error Claims

A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action.

. . .

F.S.M. 273.18(a)(2)

The State agency shall take action to establish a claim against any household that received an overissuance due to . . . administrative error if the criteria specified in this paragraph have been met. At a minimum, the State agency shall take action on those claims for which 12 months or less have elapsed.

. . .

2. Instances of administrative error which may result in a claim include, but are not limited to, the following:

-ii A State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment.

. . .

F.S.M. 273.18(b)

For each month that a household received an overissuance due to . . . administrative error, the State agency shall determine the correct amount of Food Stamp benefits the household was entitled to receive. The amount of the administrative error claim shall be calculated based, at a minimum, on the amount of overissuance which occurred during the 12 months preceding the date the overissuance was discovered.

F.S.M. 273.18(c)(1)

State agencies shall initiate collection action against the household on all . . . administrative error claims unless the claim is collected through offset. . . .

F.S.M. 273.18(d)(1)

State agencies shall collect payments from household currently participating in the program by reducing the household's food stamp allotments. Prior to the reduction, the State agency shall inform the household of the appropriate formula for determining the amount of food stamps to be received each month and the effect of that formula on the household's allotment (i.e., the amount of food stamps the State agency expects will be recovered each month. . . .

. . .

ii. Administrative Error Claim

For administrative error claims, the amount of food stamps shall be the greater of ten percent of the household's monthly allotment or \$10 per month.

F.S.M. 273.18g(4)

Under this regulation, the Department has the obligation to recover overpaid amounts back to twelve months before the date the overpayment was discovered. This overpayment was discovered in December of 1997, so all benefits wrongly paid out from January 1, 1997, through that time must be recovered through some method. The petitioner has already received a notice regarding some of the ways he can pay back the overissuance. He was correctly advised that one method is through the recoupment of a portion of his Food Stamp benefits. If the petitioner stays on Food Stamps, the method will be reduction of his benefits unless he can pay it some other way. He was incorrectly advised

that the amount of reduction under that method would be 5% of his allotment², when the actual figure is 10% or \$10, whichever is greater. Based on his current Food Stamp allotment the amount recovered would be \$6 per month. The regulations do not allow for any exceptions based on hardship or lack of fault. It must be concluded that the Department's determination that an overpayment occurred is correct and that such overpayment is subject to mandatory recovery under federal law.

#

² Some confusion may have arisen because 5% is the amount of recovery in ANFC overpayments which occurred through administrative error.